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No. 75-382

In the Supreme Court of the United States

OCTOBER TERM, 1975

FEDERAL ENERGY ADMINISTRATION, ET AL., PETITIONERS

v.

ALGONQUIN SNG, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONERS

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–32a) is reported at 518 F. 2d 1051. The opinion of the district court (Pet. App. 37a–49a), although not separately reported, appears as an appendix to the dissenting opinion of the court of appeals (518 F. 2d at 1064–1069).

JURISDICTION

The judgments of the court of appeals (Pet. App. 33a–36a) were entered on August 11, 1975. The petition for a writ of certiorari was filed on September 10, 1975, and was granted on November 3, 1975 (A. 402). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the present actions are barred by the Anti-Injunction Act.[1]

2. Whether Section 232(b) of the Trade Expansion Act of 1962 authorizes the President—upon a finding that oil is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security—to adjust the imports of oil by imposing a system of license fees on such imports.

STATUTES INVOLVED

Section 7421(a) of the Internal Revenue Code of 1954, 68A Stat. 876, as amended, 26 U.S.C. 7421(a), provides:

> Except as provided in sections 6212(a) and (c), 6213(a), and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

Section 232(b) of the Trade Expansion Act of 1962, 76 Stat. 877, as amended by Section 127(d) of the Trade Act of 1974, Pub. L. 93–618, 88 Stat. 1993, 19 U.S.C. (Supp. IV) 1862(b), provides:

> Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of the Treasury (hereinafter referred to as the "Secretary") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall consult with, the Secretary of Defense, the Secretary of Commerce, and other appropriate officers of the United States, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information, and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this subsection. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not

[1] This question was not presented in the petition for a writ of certiorari. The Court's order allowing certiorari directed the parties to brief and argue the applicability of the Anti-Injunction Act (A. 402).

being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

STATEMENT

1. Section 232(b) of the Trade Expansion Act of 1962 gives the President authority to adjust the imports of any article in the interest of national security. It provides that if, after "an appropriate investigation," the Secretary of the Treasury "finds that [an] article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President [unless he disagrees with the Secretary's finding] shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security" (19 U.S.C. (Supp. IV) 1862(b)).[2]

The substance of the provision was originally enacted as part of the Trade Agreements Extension Act

[2] Section 232(c) of the Act, 19 U.S.C. (Supp. IV) 1862(c), enumerates some of the "relevant factors" to be considered by the Secretary and the President in determining whether imports of an article threaten to impair national security. Those factors include "domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, * * * the requirements of growth of such industries * * * including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries * * *." That Section also provides that "the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security * * *."

of 1955, 69 Stat. 162. In 1959, following the failure of a program of voluntary oil import restraints,[3] the provision was invoked by President Eisenhower to establish the Mandatory Oil Import Program, a system of volumetric restrictions or quotas on imports of petroleum and petroleum products administered by the Secretary of the Interior (Pres. Proc. 3279, 24 Fed. Reg. 1781; A. 81–90). The program was designed to reduce this Nation's dependence on foreign oil, which the President determined was being imported in such quantities and at such low costs as to threaten to impair the national security by impeding the development of domestic production and refinery capacity (24 Fed. Reg. 1781; A. 211).

The Mandatory Oil Import Program did not fully achieve its objective. Domestic consumption continued to increase more rapidly than domestic production, and succeeding Presidents amended the program by increasing the import quotas to satisfy the growing domestic demand (A. 211–212).

In March 1969, President Nixon created a Cabinet task force to conduct a comprehensive review of oil import restrictions. Following an extensive examination of the question, including consideration of written public submissions totaling more than 10,000 pages, the task force concluded that the fixed quota system was not achieving its objectives and recommended that at an appropriate time the President substitute for it a system involving the imposition of

[3] See Cabinet Task Force on Oil Import Control, *The Oil Import Question*, p. 3 (1970).

a tariff. Cabinet Task orce on Oil Import Control, *The Oil Import Question,* pp. 2, 128, 131, 134–139 (1970).

In April 1973, President Nixon amended the program by suspending existing tariffs on oil imports and providing for "a gradual transition from the existing quota method of adjusting imports" to "a system of fees" to be paid by oil importers for licenses authorizing them to import specified amounts of petroleum and petroleum products (Pres. Proc. 4210, 38 Fed. Reg. 9645, 9646; A. 92). The new program was designed to provide a long-range economic incentive to increase domestic production and refinery capacity while allowing greater levels of imports than under the prior program (A. 212). It established a gradually increasing schedule of license fees, which by the end of 1975 were to amount to $0.21 per barrel for crude oil and $0.63 per barrel for most petroleum products (A. 97). It also established a gradually decreasing level of imports that would be exempt from the license fees; by 1980, the license fees were to be imposed with regard to all oil imports covered by the program (A. 93–96, 103–104).

2. On January 4, 1975, the Secretary of the Treasury initiated an investigation under Section 232(b) to determine the current effects on the national security of imports of petroleum and petroleum products (A. 154). The investigation revealed that our increasing dependence on foreign petroleum posed a grave threat to the Nation's military security and economic welfare, a threat that had been underscored by the oil embargo imposed in September 1973 by the Organization of Petroleum Exporting Countries and the subsequent quadrupling of the price of imported oil (A. 131–132). The Secretary concluded that a sudden recurrence of an embargo or other similar interruption "would have a prompt substantial impact upon our economic well-being" and that, "in the event of a world-wide political or military crisis" resulting in "a more complete interruption of the flow of imported petroleum," the total domestic production "might well be insufficient to supply adequately a war-time economy" (A. 132).

The Secretary accordingly found that oil was being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security, and he recommended to the President that "appropriate action be taken to reduce imports" in order "to promote a lessened reliance upon such imports, to reduce the payments outflow and to create incentives for the use of alternative sources of energy" (A. 133).

On January 23, 1975, President Ford issued Proclamation 4341, further modifying the method of adjusting imports of crude oil and oil products (40 Fed. Reg. 3965; A. 110–120). The President declared that he agreed with the finding of the Secretary of the Treasury and that he "judge[d] it necessary and consistent with the national security to further discourage importation [of petroleum and petroleum products] into the United States" and to provide further incentives for increasing domestic production and refinery capacity and for developing other sources of energy (40 Fed. Reg. 3966; A. 111).

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Recognizing that "the seriousness of the situation demanded immediate action" (A. 268) to reduce the Nation's dependence upon foreign oil, the President modified the existing license fee system, imposed a supplemental fee on all oil imports, and reinstated the oil tariffs that had been suspended in 1973. The proclamation increased the existing "first-tier" license fees to their maximum levels of $0.21 and $0.63 for imports in excess of the amounts that were excused from license fees under the existing program. In addition, the proclamation imposed on all imported oil, whether or not subject to the first-tier fees, a supplemental fee of $1.00 per barrel for oil entering on or after February 1, 1975, rising to $2.00 per barrel on March 1, 1975, and to $3.00 per barrel on April 1, 1975 (A. 112).[4]

The Federal Energy Administration thereafter amended its oil import regulations to implement the

[4] The proclamation authorized the Administrator of the Federal Energy Administration to reduce the fee payable for imports of certain refined products by an amount increasing to as much as $1.80 per barrel by April 1975 (40 Fed. Reg. 3968; A. 114).

The scheduled increases in the supplemental fee to $2.00 and $3.00 per barrel were subsequently deferred. See Pres. Proc. 4355, 40 Fed. Reg. 10437, A. 121–124; Pres. Proc. 4370, 40 Fed. Reg. 19421, A. 125–126. The $2.00 fee was later made effective as of June 1, 1975. Pres. Proc. 4377, 40 Fed. Reg. 23429, A. 127–130. The $3.00 fee was not imposed.

On January 3, 1976, after the President signed the Energy Policy and Conservation Act of 1975, he issued Proclamation 4412, 41 Fed. Reg. 1037, which eliminated the $2.00 supplemental fee but not the first-tier fees (see pp. 13–14, *infra*).

provisions of Proclamation 4341 (40 Fed. Reg. 4771–4776).

3. On January 27, 1975, respondents[5] brought actions in the United States District Court for the District of Columbia seeking declaratory and injunctive relief against the imposition of oil import license fees (A. 17–35, 42–58, 61–70). The complaints alleged that imposition of the fees was beyond the President's constitutional and statutory authority, that proper procedures were not followed, and that no proper environmental impact statement was prepared.

On respondents' motions for a preliminary injunction, the district court ruled that Section 232(b) of the Trade Expansion Act of 1962 "is a valid delegation of authority by Congress to the President and confers upon him the power to impose import license fees on oil imports once he determines the fact of threatened impairment of the national security" (Pet. App. 44a). "[T]he license fee program," the court stated, "is one of a number of possible actions covered in the non-defined phrase 'to adjust imports' "; it was properly instituted as "a regulatory measure * * * for the protection of national security" (*id.* at 42a).[6]

[5] One set of respondents is composed of 10 utility companies that sell gas or electricity in the northeastern United States and one member of Congress. The other set is composed of nine states and the governors of eight of those states (Pet. App. 8a–9a and nn. 7–9).

[6] The court noted that respondents did not challenge "the President's determination that his program is required in the interests of national security" (Pet. App. 39a).

The court also found that all the procedural steps required by Section 232(b) had been followed (*id.* at 44a–45a) and that, "in view of the emergency nature of the problem and the need for prompt action" (*id.* at 47a), preparation of an environmental impact statement in advance of the proclamation had not been required under the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321, *et seq.* (*id.* at 46a–47a).

Accordingly, since "plaintiffs have not made a strong showing that it is likely that they will prevail on the merits," and since "any interference by way of injunctive relief would be inconsistent with the public interest," the district court denied the motions for preliminary relief (*id.* at 48a).[7]

4. Respondents' appeals were consolidated in the court of appeals with their petitions for review of the Federal Energy Administration's regulations,[8] in which they presented essentially the same contentions that they had raised in their complaints in the district court. The court of appeals, with one judge dissenting, reversed the judgment of the district court and remanded the cases with instructions to grant appropriate relief to respondents; it also set aside the Federal

[7] The district court thereafter ordered that its findings, conclusions, and order would constitute its final judgment in the cases (A. 344).

[8] The petitions for review were filed pursuant to Section 7(i)(2)(A) of the Federal Energy Administration Act of 1974, Pub. L. 93–275 88 Stat. 102, 15 U.S.C. (Supp. IV) 766(i)(2)(A).

Energy Administration's regulations (Pet. App. 1a–32a).[9]

The court of appeals reasoned that, although Section 232(b) authorizes the President, in the interest of national security, to "take such action * * * as he deems necessary to adjust the imports of [an] article," to give the statute the broad interpretation that its terms suggest "would be an anomalous departure" from "the consistently explicit, well-defined manner in which Congress has delegated control over foreign trade and tariffs" (*id.* at 12a). The court inferred from the legislative history that Congress intended, when it authorized the President to "adjust

[9] The court of appeals stayed the issuance of its mandate to and including September 15, 1975 (A. 400), to permit the filing of a petition for a writ of certiorari. The petition for a writ of certiorari was filed on September 10, 1975. On September 29,1 975, the court of appeals denied a motion to modify the stay (A. 401), and it has not issued its mandate.

After the court of appeals decided this case, several actions were filed in district courts seeking to enjoin further collection of the base and supplemental license fees. *E.g.*, *Amoco Oil Corp., et al.* v. *Zarb, et al.*, D.D.C., Civ. Action Nos. 75–1579, *et al.*; *Coastal States Gas Corp., et al.* v. *Federal Energy Administration, et al.*, S.D. Tex., Civ. Action Nos. 75–H–1668, *et al.* The district courts in those cases issued preliminary injunctions requiring the defendants to deposit the fees collected under the program in a special Treasury account and to invest the funds in interest-bearing government bonds so that the fees will be available for possible refund in the event that the judgment of the court of appeals in the present case is affirmed.

the imports of [an] article," to permit the use only of "direct controls" (*id.* at 16a), such as quotas, and to exclude the use of "indirect controls" (*id.* at 22a), such as license fees (*id.* at 27a–28a). The court therefore concluded that "the two-tier program of license fees initiated by Presidents Nixon and Ford are beyond the scope of their [Section 232(b)] authority and cannot stand" (*ibid.*).[10]

Judge Robb dissented, observing (*id.* at 30a–31a):

> The statute authorizes the President to "take such action . . . as he deems necessary to adjust . . . imports", without purporting to limit in any way the kind of action available to the President. Admittedly, quotas have a direct effect on imports, whereas license fees have an indirect effect. But both affect imports, and I cannot see how the plain and broad language of section 232(b) can be read to limit the President to the use of one or the other.

5. On December 22, 1975, the President signed the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, which is designed, in part, to "decrease dependence upon foreign [oil] imports" and "enhance national security" (S. Rep. No. 94–516, 94th Cong., 1st Sess. 117 (1975)). Title I of the Act provides for the creation of a strategic petroleum reserve to "diminish the vulnerability of the United

[10] The majority found it unnecessary to decide whether the statute, if more broadly interpreted, would be an unconstitutional delegation (Pet. App. 28a). It also did not reach respondents' procedural challenges to the proclamation and the implementing regulations (*id.* at 10a, n. 11, 28a) and did not discuss the need for an environmental impact statement.

States to the effects of a severe energy supply interruption" (89 Stat. 881). Title IV establishes a petroleum pricing policy that provides for gradual decontrol of the price of domestically-produced crude oil.

On January 3, 1976, the President issued Proclamation 4412 (41 Fed. Reg. 1037),[11] modifying the license fee program in light of the Energy Policy and Conservation Act, which, according to the proclamation, "establishes programs to reduce the vulnerability of the United States to interruptions in the importation of petroleum" and "provides for a system of price controls which will allow gradual increases in the cost of domestic petroleum to levels substantially above those which prevail at present and should, in the long term, promote petroleum conservation and tend to discourage the importation into the United States of petroleum and petroleum products" (*ibid.*; App., *infra,* pp. 1a–2a).

The President determined that "the purposes of the supplemental [oil import license] fee will be served by such legislation" and that "it is consistent with the national security to eliminate the supplemental fee effective December 22, 1975" (*id.* at 2a). At the same time, however, the President determined to retain the base fees "in order to offset the relative advantages of locating refining capacity abroad, and to carry out the other long term objectives of the import program established pursuant to Proclamation No. 4210" (*ibid.*).

[11] The proclamation is reproduced as an appendix to this brief, *infra*, pp. 1a–4a.

The result is that the supplemental fee of $2.00 per barrel on imported petroleum and petroleum products has been eliminated with respect to imports made on or after December 22, 1975, but that the base fees of $0.21 and $0.63 per barrel remain in effect.[12]

SUMMARY OF ARGUMENT

I

The Anti-Injunction Act, 26 U.S.C. 7421(a), provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person * * *." Both the district court actions and the petitions for review in the court of appeals are "suit[s] for the purpose of restraining the assessment or collection" of the oil import license

[12] To the extent that the complaints in the district court and the petitions for review in the court of appeals sought prospective relief from imposition and collection of the supplemental fees, they appear now to be moot. At least the utility companies' complaint, however, sought to enjoin the imposition and collection of the base fees as well as the supplemental fees (A. 62–63, 69–70). Since the proclamation did not affect the base fees, that aspect of the case remains alive and the question presented remains in controversy. The court of appeals should consider on remand whether other aspects of the case have been mooted and, if so, what the consequences should be for this litigation.

The new legislation and proclamation have not reduced the importance of the issue presented in the petition for a writ of certiorari in this case. The President is not precluded from reinstituting the supplemental license fee in the future if he determines that such action is necessary to protect the national security, and the disposition of the fees paid into the special Treasury account (see note 9, *supra*) is still in issue. It is no less important now than it was at the time the petition was filed to clarify the President's authority under Section 232(b).

fee. The suits are not barred by the statute, however, because the license fee, even if it may properly be characterized as a tax, is not the kind of tax to which the Anti-Injunction Act applies.

As we read the provisions of the Internal Revenue Code, Section 7421(a) is applicable only with respect to taxes imposed under the Internal Revenue Codes of 1954 and 1939. The legislative history of the Section, which originated in 1867 as an amendment to an internal revenue law, appears to support that interpretation. Since the import license fee was not imposed under the Internal Revenue Code, the Anti-Injunction Act is not a jurisdictional bar to the present actions.

II

A. Section 232(b) of the Trade Expansion Act of 1962 authorizes the President, when he finds that the imports of an article threaten to impair the national security, to "take such action * * * as he deems necessary to adjust the imports of such article" to eliminate the threat. The statute prescribes the objective of the President's action but does not limit in any way the kind of action he may take to accomplish that objective. Nothing in the statutory text supports the court of appeals' distinction between "direct" (or quantitative) and "indirect" (or monetary) import controls. Either may be used to adjust imports when the President deems it necessary to protect the national security.

B. (1) The legislative history of the statute fully supports that conclusion. The substance of what is

now Section 232(b) was originally enacted as part of the Trade Agreements Extension Act of 1955. For some years there had been a growing concern in Congress that increased imports of defense-related raw materials—including oil and other mineral resources—were endangering the national security by reducing our own capacity to produce such materials in the event that international hostilities caused an interruption in foreign supply.

Some persons believed that the solution was to *reduce* trade barriers and to stockpile critical materials. Others sought to *increase* import restrictions—in the form of quotas or tariffs—in order to stimulate domestic production. Many specific proposals to protect individual industries were presented to Congress.

Section 232(b) represented a compromise. Rather than fixing the nature and level of import restriction for each industry that sought legislative protection, Congress determined to give the President broad authority, not only to decide whether imports of a particular article are threatening to impair the national security, but also to take whatever action he deems necessary to adjust the imports of such an article to eliminate that threat. Senator Millikin, co-author of the provision (which originated as a Senate amendment to a bill passed by the House), stated on the floor of the Senate that it would authorize the President to "use tariffs, quotas, import taxes, or other methods of import restriction" (101 Cong. Rec. 5299). The statements of Senator Byrd, the other author of the compromise provision, were to the same

effect. The chairman of the House Ways and Means Committee, during debate on the conference report, likewise indicated that the Senate amendment would permit the President to use either quantitative or monetary controls. And both chambers approved the bill after receiving a letter from the President's Special Counsel, which stated that, under the Byrd-Millikin national security provision, the President's action to adjust imports "could take any form that was appropriate to the situation" (*id.* at 8162, 8243).

(2) When the provision was reenacted in 1958, Congress was aware of the President's view that the existing law authorized the imposition of different types of controls to adjust imports, including tariffs as well as quotas. Although Congress undertook to prescribe the procedure to be followed and the factors to be considered by the President in making a national security determination, it did not restrict what it recognized to be the President's broad authority to choose the means of adjusting the imports of an article once he has made such a determination.

The same provision was carried forward in the Trade Expansion Act of 1962. In 1970, a special task force advised the President that he should exercise his authority under Section 232(b) to abandon the system of quotas on imports of petroleum and petroleum products and to substitute a system of tariff restrictions. Congress thereafter failed to enact an amendment to Section 232 that would have precluded any adjustment of imports by the imposition of a duty or fee.

In April 1973, President Nixon followed the advice of the task force and replaced the oil import quota system with a license fee system. In the face of that assertion of statutory authority, Congress reenacted Section 232(b) without material change in the Trade Act of 1974. That reenactment, confirming the President's authority to take whatever action he deems necessary to adjust imports in the interest of national security, must be viewed, in the circumstances, as a congressional ratification of the correctness of the executive interpretation of the scope of that authority.

C. Although the President's authority to impose import controls under some other statutes is more circumscribed than it is under Section 232(b), that is not a reason to construe Section 232(b) more narrowly than its terms and history require. The breadth and flexibility of the authority conferred on the President by Congress in the area of foreign trade reflect the nature of the national interest at stake. Congress intended in Section 232(b) to give the President the power to choose from among a wide range of possible actions to adjust imports, in order that he have the flexibility of response necessary to meet the changing needs of national security.

ARGUMENT

I

THE ACTIONS ARE NOT BARRED BY THE ANTI-INJUNCTION ACT

In its order granting the petition for a writ of certiorari in this case, the Court directed the parties

to brief and argue the applicability of the Anti-Injunction Act, 26 U.S.C. 7421(a). That statute provides, with exceptions not relevant here, that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person * * *."

In our view, both the district court actions and the petitions for review in the court of appeals may be characterized as "suit[s] for the purpose of restraining the assessment or collection" of the oil import license fees at issue here. See *Bob Jones University* v. *Simon*, 416 U.S. 725; *Alexander* v. *"Americans United", Inc.*, 416 U.S. 752. We are doubtful, however, to what extent the oil import license fee could properly be characterized as a tax. Although the license fee resembles a tax insofar as it operates as a revenue-producing levy (cf. *United States* v. *Mississippi Tax Comm'n*, 421 U.S. 599, 606), and resembles a customs duty insofar as it is assessed against the importation of goods (cf. *Brown* v. *Maryland*, 12 Wheat. 419, 436–437), it is imposed for regulatory purposes under a statute designed to protect the national security (cf. *United States* v. *Butler*, 297 U.S. 1, 61). But we find it unnecessary here to determine whether as a general matter the license fee is most appropriately viewed as a tax, a customs duty, or a regulatory exaction, for, as we now show, even if the fee were to be characterized as a "tax" it nevertheless would not be the kind of "tax" the assessment or collection of which is protected from restraint under the Anti-Injunction Act.

Section 7851 of the Internal Revenue Code of 1954, which governs the applicability of the provisions of the 1954 Code, indicates that Section 7421(a), the anti-injunction statute, applies only to suits brought to restrain assessment or collection of taxes imposed by either the 1954 Code or the Internal Revenue Code of 1939. Section 7421(a) is contained within Chapter 76 (Judicial Proceedings) of Subtitle F (Procedure and Administration) of the 1954 Code. Section 7851 (a)(6)(A) provides that Subtitle F applies with respect to all taxes imposed under the 1954 Code.[12] But it further provides that Subtitle F does not apply with respect to taxes imposed under the 1939 Code, except as subsections (B) and (C) otherwise provide. Subsection (C)(iv) does otherwise provide, by making Chapter 76 applicable in its entirety with respect to 1939 Code taxes.

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[12] Section 7851 provides in relevant part:

"*Applicability of revenue laws.*

"(a) *General rules.*

"Except as otherwise provided in any section of this title—

* * * * * *

"(6) *Subtitle F.*

"(A) *General rule.*

"The provisions of subtitle F shall take effect on the day after enactment of this title and shall be applicable with respect to any tax imposed by this title. The provisions of subtitle F shall apply with respect to any tax imposed by the Internal Revenue Code of 1939 only to the extent provided in subparagraphs (B) and (C) of this paragraph.

* * * * *

"(C) *Taxes imposed under the 1939 Code.*

"After the date of enactment of this title, the following provisions of subtitle F shall apply to the taxes imposed by the Internal Revenue Code of 1939, notwithstanding any contrary provisions of such code:

* * * * *

"(iv) Chapter 76, relating to judicial proceedings."

Accordingly, the anti-injunction statute explicitly applies to suits brought with respect to taxes imposed under both the 1954 and the 1939 Codes. But since that anti-injunctioin statute would not have applied even with respect to 1939 Code taxes but for the specific savings provision to that effect in Section 7851, and since Congress did not make similar provision for its applicability with respect to any other taxes, it is reasonable to conclude that Congress did not intend that statute to apply to suits brought with respect to taxes other than those imposed under the 1954 and 1939 Codes.

This conclusion is reinforced by the legislative history of the Anti-Injunction Act. The Act originated as Section 10 of the Act of March 2, 1867, 14 Stat. 475, amending Section 19 of the Act of July 13, 1866, 14 Stat. 152, which itself had amended the Act of June 30, 1864, 13 Stat. 233, "An Act to provide Internal Revenue to support the Government, to pay Interest on the Public Debt, and for other Purposes." Section 10 of the 1867 Act added to the earlier statute the clause that appears in italic:

> That no suit shall be maintained in any court for the recovery of any tax alleged to have been erroneously or illegally assessed or collected, until appeal shall have been duly made to the commissioner of internal revenue according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of said commissioner shall be had thereon, unless such suit shall be brought within six months

> from the time of said decision, or within six months from the time this act takes effect: *Provided,* That if said decision shall be delayed more than six months from the date of such appeal, then said suit may be brought at any time within twelve months from the date of such appeal. *And no suit for the purpose of restraining the assessment or collection of tax shall be maintained in any court.*

Although the original portion of the statute—the antecedent of Sections 6532(a) and 7422(a) of the Internal Revenue Code of 1954—itself barred suits "for the recovery of *any* tax" (emphasis added), both the context (an act to raise internal revenue) and the requirement of an appeal to the Commissioner of Internal Revenue, whose authority related only to internal revenue taxes (Act of July 1, 1862, 12 Stat. 432–433), indicate that in enacting the statute in 1864, and in amending it in 1866 and 1867, Congress was concerned only with internal revenue taxes and did not contemplate that the provisions of the statute would fix the procedures applicable to other taxes as well.

When the provisions of that statute were codified and enacted as Sections 3224, 3226, and 3227 of the Revised Statutes, Sections 3226 and 3227 (which embodied the original portion of the earlier statute) were expressly made applicable only to suits "for the recovery of any *internal* tax" (emphasis added). Section 3224 (embodying the 1867 anti-injunction amendment) did not include the word "internal." It provided: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

This Court has recognized, however, that the separation of the provisions in the Revised Statutes was without significance, and that the anti-injunction provision of Rev. Stat. 3224 must be read *in pari materia* with Rev. Stat. 3226 and 3227. *Snyder* v. *Marks,* 109 U.S. 189. Thus, in *Pacific Steam Whaling Co.* v. *United States,* 187 U.S. 447, involving a challenge to a license tax requirement, the Court, after alluding to "the familiar doctrine that an injunction will not lie to restrain the collection of a tax on the mere ground of its illegality" (187 U.S. at 451–452), noted that, "in respect to *internal revenue* taxes," Rev. Stat. 3224 specifically bars a suit for that purpose (*id.* at 452; emphasis added).

When Congress enacted the Internal Revenue Code of 1939, it provided in Section 4 of the enacting provisions that the Code was intended to include all general laws "relating exclusively to internal revenue" (53 Stat. 1) and that existing laws codified in the Code were therefore repealed "to the extent they relate exclusively to internal revenue" (*ibid.*). The inclusion of Section 3653(a), the predecessor of Section 7421(a) of the 1954 Code, suggests that the provision was viewed as "relating exclusively to internal revenue."

In *Bob Jones University* v. *Simon, supra,* this Court ruled that Section 7421 is not limited to the assessment or collection of federal income taxes but applies as well to federal social security and unemployment taxes, stating that "Section 7421(a) speaks of 'any tax'; it does not differentiate between federal income taxes or FICA or FUTA taxes" (416 U.S.

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at 739). Both FICA and FUTA taxes, however, are imposed by the Internal Revenue Code of 1954 (see 26 U.S.C. 3101, *et seq.*, 3301, *et seq.*). Accordingly, the Court's holding in *Bob Jones* does not require a broader reading of the Anti-Injunction Act than its history suggests is appropriate.[14]

We conclude that the bar of Section 7421(a) is inapplicable to this case. The oil import license fees at issue here were imposed by Presidential Proclamations under the authority conferred by the Trade Expansion Act of 1962, as amended by the Trade Act of 1974. Whatever may be the validity of the fees, and however one may wish to characterize them, it is clear that they were not imposed by the Internal Revenue Code of 1954 or 1939. It follows that the present actions, though aimed at restraining the collection of

[14] Some lower federal courts have stated that the Anti-Injunction Act bars suits to restrain the collection of customs duties, which are not imposed by the Internal Revenue Code. See *J. C. Penney Co.* v. *United States Treasury Department*, 439 F. 2d 63, 68 (C.A. 2), certiorari denied, 404 U.S. 869; *Horton* v. *Humphrey*, 146 F. Supp. 819, 821, n. 5 (D. D.C.) (three-judge court), affirmed *per curiam*, 352 U.S. 921. In *Penney* and *Horton*, however, the statements were unnecessary to the decisions, because the courts correctly ruled that suits challenging import duties imposed under the customs laws and administered by the Secretary of the Treasury must be brought in the Customs Court. See 28 U.S.C. 1340, 1582(a). It appears from the courts' opinions, moreover, that the applicability of the Anti-Injunction Act with respect to exactions imposed other than by the Internal Revenue Code was not put in issue by the parties. In neither case was the court's statement supported by analysis. See also *Moon* v. *Freeman*, 245 F. Supp. 837, 839 (E.D. Wash.) (three-judge court), where, in reliance upon *Horton*, the court ruled that the Anti-Injunction Act would bar injunctive relief against the imposition of "a duty on exports" imposed under the Agricultural Adjustment Act of 1938.

the license fees, are not precluded by the Anti-Injunction Act.[15]

II

SECTION 232(b) AUTHORIZES THE PRESIDENT TO ADJUST THE IMPORTS OF OIL BY IMPOSING A SYSTEM OF LICENSE FEES ON SUCH IMPORTS

When the Secretary of the Treasury formally advises the President that an article is being imported in such quantities or under such circumstances as to threaten to impair the national security, Section 232 (b) of the Trade Expansion Act of 1962 directs the President, unless he disagrees with the Secretary's finding, to "take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security * * *."

The question presented here is narrow. The Secretary of the Treasury found that oil was being imported into the United States in such quantities and under such circumstances as to threaten to impair

[15] While we therefore see no jurisdictional bar to the present actions, we note that injunctive relief in the district court may nevertheless be unavailable under settled principles of equity jurisprudence. Wholly apart from the provisions of the Anti-Injunction Act, "the rule generally followed in courts of equity [is] * * * that a suit will not lie to restrain the collection of a tax upon the sole ground of its illegality"; the complainant must show in addition that "there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence * * *." *Miller* v. *Standard Nut Margarine Co.*, 284 U.S. 498, 509; see also *Pacific Steam Whaling Co.* v. *United States*, *supra*, 187 U.S. at 451–452.

the national security, and the correctness of that finding is not contested (see Pet. App. 10a).[16] Nor is there any dispute over the correctness of the executive determination that the imposition of a system of license fees would serve to eliminate that threat to the national security (see *id.* at 39a). The issue is solely whether the imposition of such a system of license fees was within the scope of presidential authority under the statute to "take * * * action * * * to adjust * * * imports."

A. THE BROAD LANGUAGE OF THE STATUTE DOES NOT LIMIT THE KIND OF ACTION THAT THE PRESIDENT MAY TAKE TO ADJUST THE IMPORTS OF AN ARTICLE IN THE INTEREST OF NATIONAL SECURITY

Section 232(b) broadly confers upon the President the authority to *"take such action * * * as he deems necessary* to adjust the imports of [an] article and its derivatives so that such imports will not threaten to impair the national security" (emphasis added).

The President's range of choice with respect to the corrective actions that he may take under the provision is subject to only one limitation. The President must deem the action to be necessary to accomplish the prescribed objective of adjusting the imports of the article to eliminate the threat to the national security. The statute does not otherwise limit in any way the nature of the action that the President may take. Nothing in the statutory language places the

[16] In the court of appeals' words, this Nation's "increasingly dangerous dependence on foreign petroleum" (Pet. App. 10a) presents a "grave crisis" implicating "nothing less than our country's economic freedom and survival" (*id.* at 28a).

imposition of import license fees outside the scope of the President's authority to adjust imports.

Although the court of appeals concluded that Congress must have *intended* to confer on the President only the limited authority to impose "direct" import controls (such as quotas or other quantitative restrictions) and not "indirect" controls (such as license fees or other monetary exactions), it did not profess to find any basis for that conclusion in the *language* of Section 232(b). As Judge Robb correctly stated in his dissenting opinion, one "cannot find any such distinction in the statute," which does not purport "to limit in any way the kind of action available to the President" (Pet. App. 30a). Although "quotas have a direct effect on imports, whereas license fees have an indirect effect, * * * both affect imports" (*ibid.*). There is no basis in the statutory text for limiting "the President to the use of one [kind of action] or the other" (*id.* at 30a–31a).

The interpretation thrust upon the statute by the court of appeals limits the President's statutory authority to adjust imports, in order to meet a threat to the national security, to the imposition of quotas or other quantitative restrictions. But the finding that triggers the President's authority under Section 232 (b) is that an "article is being imported into the United States in such quantities *or under such circumstances* as to threaten to impair the national security" (emphasis added). As that language reflects, Congress recog- nized that "it is not only the quantity of imports that may have consequences for the national security,

but also the circumstances under which they are coming in: their use, their availability, their character." 104 Con. Rec. 10542–10543 (remarks of Rep. Mills). Under the court of appeals' holding, the President would be limited to the use of direct, quantitative controls even if, as in this case, the threat involved both quantitative and non-quantitative considerations and the President determined that quantitative controls would be ineffective to eliimnate the threat (see pp. 5–7, *supra*).

The majority of the court of appeals felt driven to this extraordinary result by its reading of the statute's legislative history and by its understanding of the manner in which Congress historically has delegated to the President control over foreign trade and tariffs. We doubt that anything less than an overwhelming showing of legislative purpose could justify what amounts to a judicial rewriting of the statute, particularly when the modification appears to produce an illogical result. As we demonstrate in the following sections of the brief, however, neither of the considerations that the court of appeals found significant supports its conclusion. To the contrary, both confirm that Section 232(b) confers the broad authority that its language suggests.

B. THE LEGISLATIVE HISTORY OF SECTION 232(b) DEMONSTRATES THAT CONGRESS INTENDED TO AUTHORIZE THE PRESIDENT TO TAKE ANY ACTION WITH RESPECT TO IMPORTS—INCLUDING IMPOSITION OF MONETARY EXACTIONS—THAT HE DEEMS NECESSARY TO PREVENT IMPAIRMENT OF THE NATIONAL SECURITY

1. *Background.*

In the Trade Agreements Act of 1934, 48 Stat. 943, Congress authorized the President, upon a finding by

him that existing duties or other import restrictions of this country or other countries were unduly burdening or restricting the foreign trade of the United States, to enter into reciprocal trade agreements with foreign countries and to modify existing duties and other import restrictions in accordance with such agreements.[17] That authority, originally granted for a period of three years (48 Stat. 944), was extended by Congress in substantially the same form several times prior to 1951. See. H.R. Rep. No. 14, 82d Cong., 1st Sess. 14–19 (1951).

Beginning in 1943, the trade agreements entered into by the President included a clause (called an "escape clause") permitting either party to modify or withdraw a trade concession if, as a result of unforeseen circumstances, the concession led to imports of an article in such increased quantities and under such circumstances as to cause or threaten serious injury to a domestic industry (*id.* at 13). The clause allowed partial or complete withdrawal of the concession, imposition of an import quota, or imposition of a rate of duty even higher than that in effect prior to the concession (*ibid.*).

Because of concern over the need to protect domestic industries during a period of defense mobilization, when domestic producers were subject to short-

[17] The term "duties and other import restrictions" was defined to include "(1) rate and form of import duties and classification of articles, and (2) limitations, prohibitions, charges, and exactions other than duties, imposed on importation or imposed for the regulation of imports" (48 Stat. 944).

ages of essential materials,[18] Congress enacted as part of the Trade Agreements Extension Act of 1951 a provision requiring that an escape clause be included in all future trade agreements and establishing a formal procedure for investigating the need to invoke the provisions of an escape clause (65 Stat. 73-75).[19]

At about the same time, some members of Congress and officers of the executive branch voiced concern that the country's increasing dependence upon foreign sources of critical raw materials, including oil, was jeopardizing the national security by risking a sudden reduction in supply in the event of war or national emergency. The President's Materials Policy Commission on Resources and Freedom (the Paley Commission), appointed in 1952 by President Truman, recommended in a report transmitted to Congress (see 98 Cong. Rec. 8705) that tariff barriers to trade in critical raw materials be lowered and that the Nation undertake to stockpile these materials for use in time of war or national emergency.[20]

Later, a commission appointed by President Eisenhower to study the Nation's foreign economic policy similarly recommended that domestic sources of raw materials for military needs "should be assured by direct means [*e.g.*, stockpiling] and not by tariffs and import quotas," H.R. Doc. No. 360, 83d Cong., 2d Sess. 7 (1954). A Special Cabinet Committee on Minerals Policy also recommended increased stockpiling (102 Cong. Rec. 4115). An Advisory Committee on Energy Supplies and Resources Policy, also appointed by President Eisenhower, recommended that if imports of crude and residual oils increased above a specified level some effort should be made through a voluntary program to limit such imports (see 101 Cong. Rec. 2365).

Some members of Congress favored *increased* trade barriers, rather than stockpiling, to stimulate domestic production of critical materials. A bill introduced in the House in 1953 would have amended the escape clause provision to allow withdrawal or modification

[18] See 97 Cong. Rec. 1074–1077; S. Rep. No. 299, 82d Cong., 1st Sess. 5–6 (1951). The provisions were also responsive to concerns that the standard escape clause was ambiguous and unworkable and therefore did not adequately protect domestic industries. See H.R. Rep. No. 14, *supra*, at 23; 97 Cong. Rec. 1075 (remarks of Rep. Bailey).

[19] The Act provided that, upon a finding by the Tariff Commission that "a product on which a concession has been granted is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products," the President "may make such adjustments in the rates of duty, impose such quotas, or make such other modifications as are found and reported by the Commission to be necessary to prevent or remedy serious injury to the respective domestic industry" (65 Stat. 74). Similar escape clause provisions were enacted as part of subsequent legislation. See 19 U.S.C. 1901–1902, 1981. More general provisions for relief from injury caused by import competition were recently enacted as part of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 2011–2018, 19 U.S.C. (Supp. IV) 2251–2253.

[20] See Hearings on Stockpile and Accesssibility of Strategic and Critical Materials to the United States in Time of War before the Special Subcommittee on Minerals, Materials, and Fuels Economics of the Senate Committee on Interior and Insular Affairs, 83d Cnog., 2d Sess., Part 8, p. 107 (1954). A staff study of the Paley Commission report is reproduced in the hearings (*id.* at 107–370).

of a trade concession if it resulted in 'impairment to national security," would have imposed import quotas on petroleum that could be modified or suspended by the President if necessary to meet domestic demand, and would have imposed increased but flexible tariffs on imports of other raw materials. See H.R. Rep. No. 777, 83d Cong., 1st Sess. 3, 7–9 (1953).[21]

The Trade Agreements Extension Act of 1954 contained a provision (the Symington Amendment) that reflected the concern over national defense requirements. It precluded reductions in duties "on any article if the President finds that such reduction would threaten domestic production needed for projected national defense requirements" (68 Stat. 360).[22]

2. *The Trade Agreements Extension Act of 1955.*

a. During congressional hearings on the Trade Agreements Extension Act of 1955, several witnesses testified that increased imports were damaging industries that employed workers with critical skills and that injury to those industries could endanger the Nation's security in time of war or national emergency when persons with such skills would be needed. See Hearings on Trade Agreements Extension before the House Committee on Ways and Means, 84th Cong., 1st Sess. 178–179, 194–195, 883–885, 1000, 1006–1013 (1955) (hereinafter "84th House Hearings"); Hear-

[21] The bill was ultimately recommitted (99 Cong. Rec. 9708) and was not enacted into law.

[22] For the current version of that provision, see 19 U.S.C. 1862(a).

ings on Trade Agreements Extension before the Senate Committee on Finance, 84th Cong., 1st Sess. 878–888, 904–911 (1955) (hereinafter "84th Senate Hearings"). Witnesses also testified that additional protection against foreign competition, in the form of import quotas or increased tariffs, was needed for domestic industries producing oil, coal, and mineral resources in order to preserve the country's capacity to produce such critical raw materials in the event of war or national emergency. See 84th House Hearings 1051–1054, 1266, 1308–1309, 1327–1328, 2118–2124; 84th Senate Hearings 113–115, 331–335, 602, 721.

The House Committee ultimately concluded that the Symington Amendment (see p. 32, *supra*) provided adequate protection to industries essential to the national defense. H.R. Rep. No. 50, 84th Cong., 1st Sess. 44 (1955).

The Senate Committee reached a different conclusion. The Committee had before it several amendments designed to protect one or more specific industries, including an amendment proposed by Senator Neely "to place a reasonable limit upon the foreign oil which is flooding the United States" (101 Cong. Rec. 2314). The Neely Amendment would have provided for the imposition of quotas on petroleum imports and would have added to the Symington Amendment the following additional provision:

> [T]he President shall take such action as is necessary to restrict imports of commodities whenever such imports threaten to retard the

> domestic development and expansion or maintenance of domestic production of natural resource commodities or any other commodities which he determines to be essential to the national security * * *. [84th Senate Hearings 1032–1033.]

That provision, as described during the hearings by a co-sponsor, Senator Martin, would have authorized the President, upon the proper findings, "to take such action as is necessary, including the imposition of import quotas *or the increase in duties,* to protect the domestic industry concerned" (84th Senate Hearings 2097; emphasis added).[23]

The bill reported by the committee contained a provision referred to as the Byrd-Millikin Amendment,[24] apparently a substitute for the Neely Amendment,[25] which would have authorized the President—upon a determination by the Director of the Office of Defense Mobilization that he "has reason to believe that any article is being imported into the United States in such quantities as to threaten to impair the national security," and if the President, after an investigation,

[23] Senator Martin added that the provision was meant to apply not only to the coal and oil industries but also to "any industry essential to defense such as lead and zinc, chemicals, fluorspar, textiles, electrical equipment, machine tools and the watch industry" (84th Senate Hearings 2097).

[24] See, *e.g.*, 101 Cong. Rec. 5307 (remarks of Senator Robertson); *id.* at 5572 (remarks of Senator Humphrey). Senator Byrd was chairman of the Committee on Finance, and Senator Millikin was the ranking minority member and a former chairman.

[25] See 101 Cong. Rec. 5390, 5600 (remarks of Senator Daniel); *id.* at 5603 (remarks of Senator O'Mahoney).

"finds the existence of such facts"—to "take such action as he deems necessary to adjust the imports of such article to a level that will not threaten to impair the national security." S. Rep. No. 232, 84th Cong., 1st Sess. 14 (1955).

That provision, which was ultimately enacted with minor modification, was explained by the committee as follows (*id.* at 4; emphasis added):

> * * * The committee had before it several proposals dealing with specific commodities, namely petroleum, fluorspar, lead, and zinc. In lieu of specific action on each of these the committee adopted an amendment which specifies that the Director of the Office of Defense Mobilization shall report to the President when he has reason to believe that imports of a commodity are entering the United States in such quantities as to threaten to impair the national security; that the President shall cause an immediate investigation to be made if he feels there is reason for such belief; and that the President, if he finds a threat to the national security exists, shall take *whatever action is necessary* to adjust imports to a level that will not threaten to impair the national security.
>
> The committee believes that this amendment will provide a means for assistance to the various national defense industries which would have been affected by the individual amendments presented.

The Byrd-Millikin Amendment was thus a compromise. Rather than adopting separate amendments concerning each of the critical raw materials for which

special protection was sought in the form of quotas or increased tariffs (see p. 33, *supra*), the committee proposed an amendment that would give the President broad, flexible authority to take any appropriate action, through import quotas or otherwise, to ensure that industries critical to the national security are sufficiently protected.

Moreover, the broad language of the Byrd-Millikin Amendment ("such action as he deems necessary to adjust the imports") was nearly identical to that of the Neely Amendment ("such action as is necessary to restrict imports"). If the latter was indended, as Senator Martin stated (see p. 34, *supra*), to authorize the use of monetary exactions as well as quotas, it is fair to infer that the Byrd-Millikin substitute was also so intended. Similarly, the phrase used by the committee in its report ("whatever action is necessary to adjust imports") must be understood to comprehend all the varieties of import restrictions—including increased duties—that had been proposed with respect to various articles and that were already part of the President's arsenal under the escape clause provision (see pp. 29–30 and n. 19, *supra*).

b. The floor debate in the Senate fortifies that inference. Senator Millikin, explaining, in response to questions, the amendment that he and Senator Byrd were responsible for drafting, stated unequivocally that the amendment authorized the President to "use tariffs, quotas, import taxes, or other methods of import restriction"—in short, to take "whatever action he deems necessary to adjust imports" (101 Cong.

Rec. 5299).[26] Senator Barkley, a member of the Senate Committee on Finance, stated that the provision would permit the President to "impose such quotas *or take such other steps* as he may believe to be desirable in order to maintain the national security" (*id.* at 5298; emphasis added). And Senator Bennett, like Senator Millikin, believed that the bill would authorize use of "the entire scope of tariffs, quotas, restrictions, stockpiling, and any other variation of these programs in order to protect a particular industry" (*id.* at 5588).[27] We have found nothing in the debate to contradict these representations.

The court of appeals thought that the following exchange between Senators Saltonstall and Byrd demon-

[26] The court of appeals failed to give due weight to Senator Millikin's remarks. That the Senator was a "representative of Colorado which was a major supplier of coal and petroleum" (Pet. App. 17a) does not "blur [the] probative value" (*ibid.*) of his statement as an important guide to legislative intent. It is not uncommon that a bill's author represents a state with a special interest in the legislation. While that special interest may explain the legislator's role in drafting the legislation, it does not diminish the relevance of his understanding of the bill's provisions. Indeed, Senator Millikin invoked his State's strong interest in import protections to support his assurances that the amendment would accomplish its objective (101 Cong. Rec. 5299).

[27] There is no foundation for the court of appeals' statement that Senator Bennett's remark "clearly was made in reference to the entire bill and other existing laws" (Pet. App. 17a). As the context of the remark plainly indicates, Senator Bennett was addressing himself to the ways in which Section 7 of the bill—the Byrd-Millikin Amendment—would change existing law. He anticipated that, with all the tools that the provision would make available to the President for protecting essential industries, hundreds of industries would seek recognition as essential to the national security (101 Cong. Rec. 5588).

strated that "the intended scope of the [President's] action was limited to direct controls" (Pet. App. 16a). In fact, it persuasively demonstrates the converse proposition.

> Mr. SALTONSTALL. This is the final question I should like to address to the Senator. The problem of oil imports is taken care of in the last section of the bill. This gives the opportunity to the President to adjust imports, under restrictive conditions or quotas, after a report by the Director of Defense Mobilization, and after a separate, independent investigation by the President, if he believes the national security is being affected.
>
> Mr. BYRD. That is correct, except the amendment applies to all commodities; it applies not only to oil, but to all commodities.
>
> Mr. SALTONSTALL. It applies to all commodities does it?
>
> Mr. BYRD. Yes. In other words, *it puts other commodities on the same basis as agricultural commodities.* It simply leaves to the President the power, in his discretion, to decide whether *to impose a quota or to reduce the imports.* [101 Cong. Rec. 5297; emphasis added.]

The colloquy followed an exchange between Senators Byrd and Thye concerning the President's authority under Section 22 of the Agricultural Adjustment Act to impose import restrictions on agricultural products (101 Cong. Rec. 5296). That Section provided then, as it does today, that if the President finds, after an investigation by the Tariff Commission, that articles are being imported "under such conditions and in such quantities" (7 U.S.C. 624(a)) as to

interfere with certain agricultural programs or reduce substantially the domestic production of certain agricultural commodities, "he shall by proclamation impose such fees * * * or such quantitative limitations * * * as he finds * * * necessary" to protect the affected program or commodity (7 U.S.C. 624(b)). Senator Byrd's statement that the national security provision in the Trade Agreements Extension Act "puts other commodities on the same basis as agricultural commodities" (101 Cong. Rec. 5297) thus clearly indicates that it was designed to give the President similar flexibility in determining the appropriate means of adjusting the imports of an article and that the available means included monetary exactions as well as quantitative restrictions.

Senator Byrd's further statement—that the provision "leaves to the President the power, in his discretion, to decide whether to impose a quota or to reduce imports" (*ibid.*)—reinforces the implications of the other statement. The use of the disjunctive—"to impose a quota *or* to reduce the imports"—"suggests that [Senator Byrd] did not consider the quota power to be the only power that was being delegated." Note, 89 Harv. L. Rev. 432, 435, n. 31 (1975).[28]

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[28] Senator Humphrey described the national security provision as authorizing the President "to place import quotas on any articles that threaten to impair the national security" (101 Cong. Rec. 5572). That he did not view quotas as the exclusive means of adjusting imports is indicated by his remark a few moments later that the President's authority must be used with an appreciation of the potential danger of retaliatory actions on the part of our trading partners. Export industries, he stated, "can be hurt as much by increasing tariffs and a lessening of world trade as others might be by lowering of tariffs" (*ibid.*).

The bill was passed by the Senate without amendment to the National security provision (101 Cong. Rec. 5655).

c. The House conferees accepted the Byrd-Millikin national security provision with a minor amendment. H.R. Conf. Rep. No. 745, 84th Cong., 1st Sess. 2, 6–7 (1955.)

During House debate on the conference report, Congressman Cooper (chairman of the House Ways and Means Committee, member of the conference committee, and floor manager of the bill) explained the provisions of the Byrd-Millikin Amendment. He stated that the President would be expected to "consider the impact of any decision [to adjust the imports of an article] on our overall strength and security, keeping in mind that *any modification of a duty on imports or a quota* would inevitably result in a curtailment of exports by the United States" (101 Cong. Rec. 8161; emphasis added). That statement plainly reflects an understanding that the President would not be limited to quantitative import restrictions.

Congressman Cooper presented as part of his remarks a letter from Gerald D. Morgan, Special Counsel to the President, setting forth the administration's position on the Senate amendments to the bill (*id.* at 8161–8162). The letter stated that, under the Byrd-Millikin amendment, the President's action to adjust imports "could take any form that was appropriate to the situation" (*id.* at 8162). The substance of the Morgan letter was also presented to the Senate by

Senator Byrd during debate on the conference report (*id.* at 8243).[29]

The bill, including the Byrd-Millikin Amendment, was enacted into law.[30]

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[29] The conference report stated the understanding of the conferees that the national security provision "is not intended to, and does not, diminish or impair any authority the President may have under other law" (H.R. Conf. Rep. No. 745, *supra*, at 6). Respondents argued below—"plausibly," in the court of appeals' view (Pet. App. 18a)—that for the "conference statement to have content, section 1862(b) cannot grant the expansive authority that [the] Government claims" (*ibid.*). As the conference report itself makes clear, however, the statement was intended only to emphasize that the President would retain his authority, even in the absence of a threat to the national security, "to stockpile critical materials under any other law" (H.R. Conf. Rep. No. 745, *supra*, at 6). Congressman Cooper's similar explanation of the language relied on by respondents (101 Cong. Rec. 8160), and his representation that "[t]he President will enjoy full and unimpaired power in the administration of [the Byrd-Millikin] amendment" (*id.* at 8161), demonstrates, contrary to the court of appeals' view, that respondents' argument is implausible. See Note, *supra*, 89 Harv. L. Rev. at 435–436, n. 31.

[30] As enacted, the national security provision stated (69 Stat. 166):

"In order to further the policy and purpose of this section, whenever the Director of the Office of Defense Mobilization has reason to believe that any article is being imported into the United States in such quantities as to threaten to impair the national security, he shall so advise the President, and if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made to determine the facts. If, on the basis of such investigation, and the report to him of the findings and recommendations made in connection therewith, the President finds that the article is being imported into the United States in such quantities as to threaten to impair the national security, he shall take such action as he deems necessary to adjust the imports of such article to a level that will not threaten to impair the national security."

3. *The Trade Agreements Extension Act of 1958.*

After the national security provision was enacted, but before it was reenacted as part of the Trade Agreements Extension Act of 1958, the Office of Defense Mobilization submitted a report to the Subcommittee on Foreign Trade Policy of the House Ways and Means Committee. The report stated that, while the provision "does not prescribe the specific actions which the President would be authorized to take, congressional discussion of the legislation indicated that the imposition of new or increased tariff duties on imports *and* the establishment of import quotas were authorized by the language adopted."[31] Another statement by that Office, submitted during hearings before the subcommittee, reiterated that, under the existing law, "only the President is authorized to determine that there is a threat [to the national security] and what means should be employed to meet it."[32]

Congressman Mills, then chairman of the subcommittee, stated on the floor of the House that "[t]he committee looked very carefully into the national security provisions of existing law" (104 Cong. Rec. 10542). The committee recommended, and Congress enacted, certain procedural amendments to those pro-

[31] Foreign Trade Policy, Compendium of Papers on United States Foreign Trade Policy Collected by the Staff for the Subcommittee on Foreign Trade Policy of the Committee on Ways and Means, p. 643 (1958) (emphasis added).

[32] Hearings on Foreign Trade Policy before the Subcommittee on Foreign Trade Policy of the House Committee on Ways and Means, 85th Cong., 1st Sess. 399 (1957).

visions (see 72 Stat. 678–679)."[33] Although aware of the Office of Defense Mobilization's view that the existing law authorized the imposition of different types of controls to adjust imports, including tariffs as well as quotas, the committee did not recommend, and Congress did not enact, any change in what Congressman Mills referred to as "the broad delegation of authority" (104 Cong. Rec. 10542) to the President to select the means of accomplishing the necessary adjustment.

The committee's report instead reiterated that the purpose of the national security provision was "to provide those best able to judge national security needs [with] * * * a way of taking *whatever action is needed* to avoid a threat to the national security through imports." H. R. Rep. No. 1761, 85th Cong., 2d Sess. 13 (1958) (emphasis added). Similarly, the report of the Senate Committee on Finance stated that "the amendments are designed to give the President unquestioned authority to limit imports which threaten to impair defense-essential industries." S. Rep. No. 1838, 85th Cong., 2d Sess. 5–6 (1958).[34]

[33] The amendments simplified the procedure for the investigation to be conducted by the Director of the Office of Defense Mobilization, and specified some of the considerations that should be taken into account by the Director of that Office and by the President in determining whether imports of an article are threatening to impair the national security. See 104 Cong. Rec. 10542–10543 (remarks of Rep. Mills).

[34] As reenacted in 1958, the national security provision provided in relevant part that, "unless the President [after receiving advice that imports of an article threaten to impair the national security] determines that the article is not being imported into

4. *The Trade Expansion Act of 1962.*

During hearings on the Trade Expansion Act of 1962, at least one member of the House Committee on Ways and Means stated his understanding that the President's authority to adjust imports under the national security provision included the power not only to impose quotas but also "to use the tariff mechanism in order to bring about a restriction in quantities of materials that might threaten to impair the national security." Hearings on Foreign Commerce: Trade Expansion Act of 1962 before the House Committee on Ways and Means, 87th Cong., 2d Sess. 767 (1962). We are not aware of anything to the contrary in the hearings.

The committee recommended reenacting "the existing provision under which the President shall take action to adjust the imports of a given article (or its derivatives) when he finds such imports threaten to impair the national security * * *." H. R. Rep. No. 1818, 87th Cong., 2d Sess. 17, 41 (1962). The provision was ultimately reenacted without substantive change as Section 232(b) of the 1962 Act (76 Stat. 877).

The court of appeals thought it was significant that the Senate passed and the conference committee later deleted an amendment to the Act that would have

the United States in such quantities or under such circumstances as to threaten to impair the national security * * *, he shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security" (72 Stat. 678).

"authorize[d] the President, when he finds it in the national interest, to proclaim the increase of any existing duty to such rate as he finds necessary, to impose duties on items not otherwise subject to duty and to impose quotas or other such import restrictions as he finds necessary." S. Rep. No. 2059, 87th Cong., 2d Sess. 8 (1962).[35] The purpose of the amendment apparently was to protect American industry by giving the President authority to impose retaliatory trade barriers and to strengthen the President's bargaining position in negotiating trade agreements. See 108 Cong. Rec. 19777, 19778 (remarks of Senator Kerr); *id.* at 19875 (remarks of Senator Holland). The amendment was stricken in conference (H.R. Conf. Rep. No. 2518, 87th Cong., 2d Sess. 13 (1962)), apparently because it failed to provide substantive standards or procedural safeguards for invocation of the authority conferred. See 108 Cong. Rec. 22182 (remarks of Senator Byrd).

The court of appeals inferred from the proposal's introduction that "Congress believed that no other provision of the Act conferred that authority" and, from the amendment's eventual rejection, that Congress "did not desire to confer this authority and dis-

[35] The amendment provided (108 Cong. Rec. 19573):

"Notwithstanding any other provision of law, the President may, when he finds it in the national interest, proclaim with respect to any article imported into the United States—

"(1) the increase of any existing duty on such article to such rate as he finds necessary,

"(2) the imposition of a duty on such article (if it is not otherwise subject to duty) at such rate as he finds necessary, and

"(3) the imposition of such other import restrictions as he finds necessary."

cretion upon the President" (Pet. App. 21a). Even assuming the correctness of those inferences, neither is "devastating to the Government's position" (*ibid.*).

First, as the Senate committee report indicates (see pp. 44–45, *supra*), the proposed amendment would have authorized the use of quotas as well as duties. The court's analysis, therefore, "does not * * * lead to a distinction between tariffs and quotas as means for reducing imports." Note, *supra*, 89 Harv.L.Rev. at 436. If rejection of the amendment implies an unwillingness to confer authority upon the President, the implication is no stronger with respect to "indirect" import controls than with respect to "direct" controls.

Moreover, contrary to the court of appeals' assumption, the rejected provision would not have given the President "the same authority he claims derives implicitly from [Section 232(b)]" (Pet. App. 20a). Unlike the rejected proposal, which would indeed have been an expansive delegation of authority to the President to impose import controls in the "national interest," Section 232 provides for an investigation, consultation, and recommendation to the President, requires a finding that imports threaten to impair the "national security" (in light of the considerations set forth in Section 232(c), see note 2, *supra*), and limits any adjustment of imports under the Section to what is necessary to eliminate the threat to the national security. That Congress rejected in 1962 a far broader delegation of authority over duties and other import restrictions, because of the absence of standards and procedural safeguards (see p. 45, *supra*),

does not mean that the terms of Section 232(b) should be read to exclude the President's use of license fees as a method of adjusting imports.

5. *The unsuccessful 1970 amendment.*

In 1970, the President's Cabinet Task Force on Oil Import Control advised the President that Section 232(b) gave him authority to increase tariffs and recommended that import quotas on oil be replaced with a system of tariff restrictions. *The Oil Import Question,* pp. 90, 131 (1970). The House thereafter passed an amendment to Section 232, designed to prohibit "any adjustment of imports * * * by the imposition or increase of any duty or of any fee or charge having the effect of a duty." H.R. Rep. No. 91–1435, 91st Cong., 2d Sess. 119 (1970). The amendment was reported out of the Senate Committee on Finance as part of the Social Security Amendments Act of 1970 (S. Rep. No. 91–1431, 91st Cong., 2d Sess. 36 (1970)), but was deleted on the floor of the Senate (116 Cong. Rec. 43625, 43646) and was not enacted.

If the court of appeals' analysis of the rejected 1962 amendment were applied to the aborted 1970 amendment, one might infer that Congress believed the President *did* have authority under Section 232(b) to adjust imports by the use of monetary exactions [36] and that it determined not to rescind that authority.

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[36] The House and Senate committee reports on the proposed amendment stated that "the delegation of authority to the President to adjust imports *should be* limited to the use of quantitative limitations." H.R. Rep. No. 91–1435, *supra*, at 23 (emphasis added); S. Rep. No. 91–1431, *supra*, at 251 (emphasis added).

6. The Trade Act of 1974.

Although President Nixon's import license fee system was initiated in April 1973 (A. 91–109), Congress, in the Trade Act of 1974, reenacted the national security provision with procedural but not substantive amendments (88 Stat. 1993). Both the Senate committee report and the conference report reaffirmed that, under the provision as amended, the President may "take such action, and for such time, as he deems necessary, to adjust imports so as to prevent impairment of the national security." S. Rep. No. 93–1298, 93d Cong., 2d Sess. 96–97 (1974); H.R. Conf. Rep. No. 93–1644, 93d Cong., 2d Sess. 29 (1974).

In view of the unsuccessful 1970 amendment and the President's subsequent assertion of authority to impose license fees on oil imports under Section 232(b), Congress's reenactment of the provision without material change can only be viewed as an acquiescence in the President's interpretation of the statutory language. See *Saxbe* v. *Bustos*, 419 U.S. 65, 74; *Massachusetts Trustees* v. *United States*, 377 U.S. 235, 241; *Massachusetts Mutual Life Insurance Co.* v. *United States*, 288 U.S. 269, 273.[37]

[37] In May 1974, the House Committee on Ways and Means reported favorably a bill (H.R. 14462, 93d Cong., 2d Sess.) that would have amended Section 232(b) in light of the oil import license fee system established in 1973 by President Nixon. The amendment would have acknowledged the President's authority under the existing provision to adjust imports by use of quantitative limitations, duties, taxes, or fees, but would have placed conditions and restrictions on the exercise of that authority with respect to petroleum and petroleum products. See H.R. Rep. No. 93–1028, 93d Cong., 2d Sess. 4, 11, 62–65 (1974). The bill was not voted upon by the House.

In February 1975, after President Ford imposed the supplemental fees for oil import licenses, Congress passed a bill (H.R. 1767, 94th Cong., 1st Sess.) that would have negated that action and would have suspended for 90 days the President's authority under Section 232(b) to adjust the imports of petroleum or petroleum products. The bill was vetoed by President Ford (H.R. Doc. No. 94–70, 94th Cong., 1st Sess. (1975)) and was not enacted into law. The reports of the Senate and House committees stated that the bill was not intended to affect the determination in the present litigation concerning the President's authority under Section 232(b) to adjust imports by imposing monetary exactions. S. Rep. No. 94–11, 94th Cong., 1st Sess. 7 (1975); H.R. Rep. No. 94–1, 94th Cong., 1st Sess. 15 (1975).

C. THAT OTHER STATUTES DELEGATE TO THE PRESIDENT MORE LIMITED AUTHORITY TO IMPOSE IMPORT CONTROLS DOES NOT MEAN THAT SECTION 232(b) MUST BE CONSTRUED TO AUTHORIZE ONLY THE USE OF QUANTITATIVE RESTRICTIONS

The statute and its legislative history point clearly to the conclusion that the President is authorized to use any means—quantitative or monetary—that he considers necessary to adjust the imports of an article in the interest of national security. The court of appeals, however, believed that such a construction of the statute "would be an anomalous departure" from "the consistently explicit, well-defined manner in which Congress has delegated control over foreign trade and tariffs" (Pet. App. 12a).

It is true that other statutes delegating to the President the authority to impose or alter import controls have frequently circumscribed that authority more

narrowly or more explicitly (see *id.* at 13a–14a). But that is not a reason for a judicial narrowing of Section 232(b). To the contrary, the contrast shows that Congress has known how to confine such delegations closely when it has so desired, and it underscores rather than contradicts our conclusion that Section 232(b) was intended to confer the authority exercised by Presidents Nixon and Ford. Cf. *United States* v. *Yoshida International, Inc.*, Ct. of Cust. & Pat. App., No. 75–6, decided November 6, 1975, slip op. 28–30.

That conclusion does not make Section 232(b) "an anomalous departure" (Pet. App. 12a) from the legislative pattern in the area of foreign trade and tariffs. For example, Section 351(a)(1) of the same Act, 19 U.S.C. 1981(a)(1)—the present version of the trade agreements "escape clause" provision (see pp. 29–30, *supra*)—confers on the President analogous authority. Upon a finding by the Tariff Commission that an article is being imported in such increased quantities as to threaten to injure a competitive domestic industry, "the President may proclaim such increase in, or imposition of, any duty or other import restriction on the article * * * as he determines to be necessary to prevent or remedy serious injury to such industry." Like the national security provision, the escape clause provision applies to any imported article and gives the President full authority to choose the method of accomplishing the broad statutory objective. See also 19 U.S.C. (Supp. IV) 2251–2253.

The escape clause provision, unlike the national security provision, includes specific limitations on the

level to which the President may increase a duty (19 U.S.C. 1981(b)). If any inference may properly be drawn from that difference, however, it is not that Congress declined to delegate in Section 232(b) similar authority to impose monetary controls, but rather that it preferred to delegate a more flexible authority in light of the national security objective of the statute. Cf. *Lichter v. United States*, 334 U.S. 742, 782 785; *United States* v. *Yoshida International, Inc.*, *supra*, slip op. 17–18.

Even broader authority to impose import controls was delegated to the President by Congress in Section 5(b) of the Trading With the Enemy Act, 40 Stat. 415, as amended, 50 U.S.C. App. 5(b). That Section authorizes the President, during time of war or declared national emergency, to exercise plenary control over "property in which any foreign country or a national thereof has any interest * * *." Included among the specific powers delegated is the power to "regulate * * * importation." The United States Court of Customs and Patent Appeals recently held that the President's authority under that statute comprehends the power to impose an import duty surcharge reasonably related to the nature of the emergency declared. *United States* v. *Yoshida International, Inc., supra.*

As these three provisions illustrate, the breadth and flexibility of the authority conferred on the President by Congress correspond to the nature of the national interest at stake. When the objective is to protect

domestic industries generally from the damaging effects of international trade concessions, as in the escape clause provision, the President's authority to implement import controls is relatively more confined than it is when the objective relates to the Nation's defense in time of war or national emergency, as in the Trading With the Enemy Act.

The objective of Section 232(b) is to control imports in order to prevent national emergencies and preserve the vitality of domestic industries that would be critical to the Nation's security in a time of international hostilities. The authority conferred by the statute is neither as circumscribed as that conferred by the escape clause provision nor as broad as that delegated by the Trading With the Enemy Act. It may be invoked only after the specified procedures have led to a determination, on the basis of factors identified in the statute, that imports of an article are threatening to impair the national security. Once such a determination has been made, however, the President is free to take whatever steps he considers necessary to eliminate the threat.

Although the President's authority in those circumstances is broad, that was the congressional design. It would defeat, not further, the legislative purpose to construe the statute narrowly merely because it was written broadly.[38]

[38] Nor is there any need "to read the Act narrowly to avoid constitutional problems" (*National Cable Television Ass'n* v. *United States*, 415 U.S. 336, 342). In the area of foreign affairs and national security, where the President requires sufficient flexibility to adapt quickly to changing conditions, broad delegations of authority are both common and constitutionally permissible. See, *e.g.*, *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 319–322; *Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 109; *Lichter* v. *United States*, *supra*.

CONCLUSION

The judgments of the court of appeals should be reversed.

Respectfully submitted.

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JANUARY 1976.

APPENDIX

PROCLAMATION 4412

MODIFYING PROCLAMATION NO. 3279, AS AMENDED, RELATING TO IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS, AND PROVIDING FOR THE LONG-TERM CONTROL OF IMPORTS OF PETROLEUM PRODUCTS THROUGH A SYSTEM OF LICENSE FEES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), the Secretary of the Treasury investigated the effects on the national security of imports of crude oil and the principal crude oil derivatives and products, and advised me that crude oil, the principal crude oil derivatives and products, and related products derived from natural gas and coal tar, were being imported in such quantities and under such circumstances as to threaten to impair the national security, and recommended that I take action to reduce such imports; and

Whereas, having considered the matters required by me to be considered by the said Trade Expansion Act of 1962, as amended, I issued Proclamation No. 4341 to adjust such imports by accelerating the base fees and imposing a supplemental fee; and

Whereas, Congress has passed, and I have approved, legislation which establishes programs to

reduce the vulnerability of the United States to interruptions in the importation of petroleum; and

Whereas, such legislation also provides for a system of price controls which will allow gradual increases in the cost of domestic petroleum to levels substantially above those which prevail at present and should, in the long term, promote petroleum conservation and tend to discourage the importation into the United States of petroleum and petroleum products; and

Whereas, I have thus determined that the purposes of the supplemental fee will be served by such legislation, and that it is consistent with the national security to eliminate the supplemental fee effective December 22, 1975; and

Whereas, in order to offset the relative advantages of locating refining capacity abroad, and to carry out the other long term objectives of the import program established pursuant to Proclamation No. 4210 of April 18, 1973, I have determined to retain the base fees at this time; and

Whereas, certain modifications to the Mandatory Oil Import Program are necessary to facilitate the availability of crude oil supplies to United States users through exchanges of Canadian and United States crude oil, and for other purposes;

Now, therefore, I, Gerald R. Ford, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the laws of the United States, including Section 232 of the Trade Expansion Act of 1962, as amended, do hereby proclaim that, effective as of December 22, 1975, Proclamation No. 3279, as amended, is hereby amended as follows:

Section 1. The last sentence of paragraph (c) of Section 1 is deleted.

Sec. 2. Subparagraph (1) of paragraph (a) of Section 3 is amended by deleting clauses (iii) through (viii), by redesignating clauses (ix) and (x) as clauses (iv) and (v) respectively, by substituting the words "paragraph 3(a)(1)(i)—(ii)" for the words paragraph(s) 3(a)(1)(i)-(iii)" wherever they may appear, and by adding clauses (iii), (vi), and (vii) to read as follows:

"(iii) with respect to the fees imposed pursuant to paragraph 3(a)(1)(i)-(ii), the amount of such fees shall be reduced, in such manner as may be provided by the Administrator, by an amount equal to any applicable duties;

"(vi) with respect to licenses issued against a surety bond pursuant to paragraph 3(a)(1)(i)-(ii), fees shall be paid no later than the last day of the month following the month in which such imports were released from customs custody or entered or withdrawn from warehouse for consumption, whichever occurs first; and

"(vii) with respect to imports made on or before December 21, 1975, all supplemental fees payable under paragraph 3(a)(1)(iii) of this Proclamation as in effect on December 21, 1975, shall be payable in accordance with this Proclamation as in effect on that date.".

Sec. 3. Subparagraph (3) of paragraph (a) of Section 3 is amended to read as follows:

"(3) The Administrator is authorized to refund or reduce fees, whether in whole or in part, (i) where the licensee failed to use, wholly or in part, the license issued to him, (ii) where refunds or reductions, whether in whole or in part, are ordered pursuant to Section 5, (iii) where refunds or reductions, whether

in whole or in part, are called for by reason of a person having exported finished products or petrochemicals, (iv) where crude oil imported by virtue of a license for which a fee was paid has been manufactured into asphalt, (v) for payment to the importer of record of sums refunded pursuant to clauses (iii), (iv), (v) and (vii) of paragraph 3(a)(1), as amended by this Proclamation, (vi) where the importer of record participates in an exchange in accordance with the next to last sentence of paragraph 4(b)(1), (vii) where refund of a licensee fee is called for by reason of the same having been improperly charged.".

Sec. 4. Subparagraph (2) of paragraph (c) of Section 3 is deleted. Subparagraph (3) of paragraph (c) of Section 3 is redesignated as paragraph (2).

Sec. 5. Subparagraph (1) of paragraph (b) of Section 4 is amended by inserting the following sentence immediately before the last sentence:

"Notwithstanding the levels established in Section 2 of this Proclamation, the Administrator may make allocations to which license fees under paragraph 3(a)(1)(i)–(ii) shall not be applicable, with respect to crude oil or unfinished oils imported from Canada in exchange for crude oil, unfinished oils, or finished products produced in the United States or entered into United States customs territory and exported to Canada.".

Sec. 6. Paragraph "n" of Section 11 is deleted.

In witness whereof, I have hereunto set my hand this third day of January in the year of our Lord nineteen hundred seventy-six and of the Independence of the United States of America the two hundredth.

GERALD R. FORD.

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